

Presentation by
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Before the Legislative Government Oversight Committee

June 10, 2008

Thank you for the invitation to appear before you again. Appearing before the Legislative Government Oversight Committee is a welcomed opportunity for the Iowa Ombudsman to present to the Iowa General Assembly an accounting of the work of my office and to alert you to trends, issues, and problems I think may warrant your attention.

My annual report for calendar year 2007 shows we worked almost 4,500 complaints, information requests, and special projects during the year. The agencies and levels of government about which those complaints and information requests dealt with continue to reflect historical patterns and emerging trends. Issues relating to corrections (prisons, community based corrections, probation and parole, and jails) make up the highest percentage of the contacts we receive. The second largest number of complaints relate to municipalities, followed by counties, then the Department of Human Services. Those numbers and distributions do not surprise me. This is what we have seen for many years. Government that controls persons, such as corrections, is by the very nature of that relationship going to generate dissatisfaction and resentment. It is also going to be one of the arenas of government we must give careful attention because incarceration is one of the most severe actions a government can take against a person. Municipal and county government is close to the citizen; their dealings are frequent, immediate, and often visible. Therefore, those numbers should not create any surprise or concern.

Some of you may recall when I appeared before this committee two years ago I raised concerns about changes needed in Iowa's public records and open meetings laws. I also raised a number of concerns about privacy issues as related to government responsibility for information it holds on Iowans and the risks and prevention of identity theft.

While the 2008 General Assembly did not pass the rewrite of Iowa's FOI laws, I am heartened by the consideration given those issues by committees in both the House and the Senate during the 2007 General Assembly, the 2007 Interim Study Committee, and the 2008 Legislative Session. I know Iowa legislators are much more knowledgeable today about these issues and their complexities than they were a year or two ago.

Iowa's FOI legislation still needs your attention, and I urge your continued consideration of changes that will improve the transparency of government in Iowa. On May 29 Ruth Cooperrider, Angela Dalton, and I met with Attorney General Tom Miller to discuss how our offices will coordinate the referral of investigative findings by the ombudsman to the attorney general for prosecutorial consideration. My office is also actively researching other models for enforcement of FOI laws beyond the Connecticut experience. In addition, we will continue to coordinate consideration of complaints about public records

and open meetings violations with the state auditor, as we have been doing for several years.

There have been several developing issues relating to public records and open meetings that have developed since adjournment of the General Assembly, and I urge this committee to explore those issues further. Foremost among these new issues has been the announcement that the state executive branch would be encouraged to charge attorneys fees for the time lawyers spend to review records of agencies requested for inspection by the media and the public. Is this what the Legislature wanted to happen when the public records law was written? Is it good public policy? Does this committee want to review this policy and its practical application? I think it should.

Iowa Code should be reviewed regarding the availability of access to information stored in electronic format, and the responsibility of the record custodian for making that information available in the range of formats it is available to the agency, especially if one format or means of access is preferred or needed by the requestor.

I also believe further clarification of what the Legislature wants for transparency by advisory bodies should be considered, especially with regard to the meaning of “policy making duties” as defined in meetings, and what is entailed in the development and making of recommendations on public policy issues.

The records and archives of the FOI interim study committee and the Senate and House State Government Committees have the letters, memos, and papers my office presented on other important issues needing continued consideration: such as when the identities of candidates for positions of public trust and authority must be revealed and how walking quorums can be prohibited, so I won’t restate those now.

I was pleased with the attention given and outcome realized during the session regarding security freeze and security breach notification and the impact those legislative changes should have upon the protection of identity information in Iowa. However, more still can be done. When an electronic or paper record is no longer to be retained, the government body should take appropriate steps to destroy or arrange for destruction of the records containing personal information. Moreover, government bodies need to implement and maintain reasonable security procedures and practices to protect personal information from unauthorized access or disclosure.

Towards this end, the legislature added a provision to SF 2308 requesting the legislative council establish an interim study committee to assess and review the extent to which public officials, entities and affiliated organizations in possession of—or with access to—personal identifying information are disclosing or selling information for compensation, thereby rendering the resident vulnerable to identity theft.

I am also aware that DAS has audited executive branch agencies and those state elected offices which agreed to be audited regarding both external and internal information

security risks. I believe it would be time well spent by the Oversight Committee to invite someone who is knowledgeable about those findings to discuss them with you.

My office is currently investigating several incidents of the use of restraint chairs in Iowa county jails. That examination should be completed this summer, and it is likely I will issue a public report on the subject with a number of findings and recommendations. In 2007 I published a report critical of a county jail which strapped a woman in a restraint chair for seven hours (five of which were consecutive) without adequate medical consultation and contrary to the jail's policy for the use of the chair. The woman claimed a history of sickle cell anemia and may have been experiencing an episode of sickle cell crisis. Because of my findings in that case and because of several other complaints about the use of restraint chairs, I decided to have my office look at restraint chair policy practice, and use from a more systemic perspective.

In early April of this year I became aware of the notice of rules by the Department of Corrections setting forth some criteria to be followed by jails when they place inmates and detainees in restraints. This is a very important, difficult, and sensitive public policy issue. I intend to speak at tomorrow's Administrative Rules Review Committee meeting about those rules. While I am not opposed to what is being considered, based upon my research and what I know is recommended by a restraint chair manufacturer, I believe there are additional important standards, criteria and practices which should be part of what is required in Iowa when restraint chairs are used. I look forward to working with the Department of Corrections, the state jail inspector, and the Iowa Sheriffs and Deputies Association in achieving such changes in the future.

However, that meeting is tomorrow and with a different committee. What I want to raise for your consideration today is the need for a comprehensive and thorough legislative inventory of the mental health programs and treatment options available in Iowa. Mental health issues cross governmental and agency boundaries. I see the Oversight Committee as being uniquely charged to overarch those boundaries and divisions. Three to four decades ago when the United States opened the doors of our states' large mental health institutes, allowing that institutionalized population to go free into society, we did not fulfill the other parts of the equation. We did not establish and fund an adequate number of community based mental health programs as part of our human services and public health system. As a consequence, significant numbers of our citizens who suffer a mental illness are without services, programs, and access to community based treatment or affordable medication. As the behaviors of some of these persons bring them into conflict with society, many enter our criminal justice system. This means our jails and prisons have become our de facto mental health institutions. That is not right, it is not fair, and it is not what a humane society does. Our county jails and our state prisons should not be allowed to become our mental health system.

According to a recently published study of inmates entering the Iowa corrections system, more than 90 percent met criteria for a current or lifetime psychiatric disorder. Even before persons are convicted and sentenced to Iowa's prisons, are we aware of and comfortable with the process for evaluating the competencies of persons being held in

our jails for trial? How long are those evaluations taking? What strains do the numbers of evaluations needed place upon jails and prisons? Are judges sensitive to the risks, strains, and costs of keeping mentally ill person behind bars awaiting an evaluation? How open are judges to civilly commit those persons already in jail? Are there other less risky, maybe even less costly, and more humane placements that could be safely and responsibly considered?

It is dangerous, expensive, risky, and costly to allow the criminalization of the mentally ill to continue here in Iowa. I do not know what the answer is. I do believe the Legislature should undertake a comprehensive and thorough examination about how we got to where we are, what it means in societal and human costs for us to remain there, and how together we can work ourselves out of this circumstance. I think you need to listen to corrections and jail officials, mental health professionals, social and human service agencies, and consultants such as the Durant Study of the DOC and the ongoing Acute Mental Health Task Force coordinated by DHS. Extricating ourselves from where we are will not be easy, it will not be cheap, but it must be done. I believe the Oversight Committee might be one place where a solution can begin

Recently I have begun actively collecting from my case statistics information about mental health issues in Iowa. Like public records and open meetings issues, mental health as a topic or category involves more than a single agency or level of government. Since I started asking staff to identify mental health as a category when closing a case in our case management system, our numbers of those designated cases have increased. I do not believe the increase is because of a sudden influx of mental health issues to the Ombudsman, they have always been there; we just haven't collected and reported on the information in a consistent way. The pie chart graphs I am handing out illustrate the types and range mental health issues we've identified both within and outside of corrections so far in 2008.

One approach my office could take to play a role toward finding a solution to this problem would be to add or designate a member of the Ombudsman's staff to be focused as a specialist on mental health issues, like the assistants for corrections, small business, public records, open meetings and privacy, whistleblower protection and child welfare.

Another strategy I'm carefully considering is to find a way to increase the number of systemic or major investigations my office undertakes each year. There are a number of topics, like our current inquiry into the use of restraint chairs by county jails, which my office could be undertaking. Yet the day-to-day citizen complaints must also be attended to, regardless whether they are individual or perceived to be part of some larger pattern. One way to achieve this goal could be to designate two or three assistants as the ombudsman systemic investigation team and to assign them each year significant, complex, and reoccurring issues to investigate. Another way to achieve this goal might be to convene an ad hoc investigative work team that could be geared up on short notice as a systemic issue appears before my office. There are advantages and disadvantages, costs and gains, to either approach.

I would appreciate hearing your thoughts either as a committee or individually about the value of resourcing a dedicated systemic investigative function in the ombudsman office. I would also value your input on whether you see a designated assistant ombudsman for mental health issues is a needed emphasis at this time.

Child support collection is an important responsibility of government. Iowa generally does quite well when compared to other states in the collection and proper distribution of child support, but there are bumps in this road also. Last week I read with interest the change in Iowa law regarding the collection of winnings at Iowa's casinos. I was totally unaware and had not even thought about whether we were failing to find out if the winner of a gaming activity owed back child support, taxes, or unpaid court costs before distributing their winnings to them.

A similar relatively unrecognized circumstance is how difficult, unfair, and contrary to good public policy is the difficulty and cost for certain members of our society to modify their child support obligations when custody circumstances change. I have asked Deputy Ombudsman Ruth Cooperrider to explain our continuing concerns with this challenge facing the children and parents of our state. It is an issue I have brought to the Legislature's attention for several years now. It is one in which there has been some movement by the Department of Human Services and on the part of the Judiciary, but there is still a considerable way to go before the problem is resolved.

Child Support – Administrative Modification

Issue and Case Examples:

My office has received complaints over the years from parents who are being required by the Department of Human Services (DHS), Child Support Recovery Unit (CSRU), to continue paying child support, even though the child is living with and being cared for by that parent. These situations may result from a juvenile court order, the incarceration or the death of the parent to whom support is paid, or by agreement of the parents or parties to the support order.

Following are actual case examples:

Father is court-ordered to pay child support, but is caring for the child in his home. The child's mother (custodial parent) was arrested earlier and entered prison and will be there for at least several years. CSRU is still collecting support from him.

CSRU is taking support from mother's paycheck even though she obtained an order giving her custody. Father is in prison. CSRU is telling her that, because the order does not address child support, they will continue to collect the support from her. The mother has been unable to get assistance from a pro-bono attorney.

Prison official complained that inmates are receiving child support payments while in prison and obviously do not have custody of the children. Inmates are not always willing to sign an agreement for CSRU to suspend collection of the support payments.

Father who is paying child support assumed care of his daughter and two stepsons when child protective services removed them from his ex-wife's home. Eventually, a juvenile court transferred custody of the children to him. However, the juvenile court has no authority to also modify or terminate his child support obligation, so child support is still being taken from his paycheck.

Father is told by CSRU that he owes child support, even though the mother of the child is deceased and he is caring for the child.

Father has support taken out of his social security benefits even though he has custody of his daughters. Original custody order granted joint legal custody with physical custody going to mother. The mother went to Missouri and left the children behind in the care of the father to prevent the children from being placed in foster care. The father cannot afford a private attorney to stop garnishments of his benefits to pay child support.

He cannot obtain free legal services because the legal aid office was the ex-wife's attorney, which creates a conflict.

Mother is still paying child support debt although son is now age 22. He was briefly (6 months) in her nephew's custody, when a support obligation was established against her. When son returned to her care, the nephew would not suspend or terminate the child support payments to him. The support order continued to be enforced because she could not afford legal help to stop it. This resulted in creating an arrearage of over \$59,000. After child support is deducted from her paycheck, she has little to live on.

Father is still paying support, even though he has all the children living with him. Former spouse would not agree for CSRU to suspend collecting support from him. His only option is to get a court order to stop it, he but cannot afford it.

Father of children has changed residences twice after leaving children with mother. She does not know what his new address is. He refuses to return her calls from his work. CSRU is aware of the father's whereabouts. They continue to collect and pay him child support for children she is raising.

The problem is the DHS-CSRU will not stop collecting support for that child until the parent obtains an order to suspend or modify the order. However, resistance by the other parent, time delay, and attorney and court fees pose obstacles for a parent to seek such judicial relief.

When these situations occur, the child also suffers because the money being collected is not going to the child. Families become a victim of a child support system process, rather than receiving a service that would help ensure self-sufficiency by making child support a reliable source of income for the parent providing a home and care for the child.

Ombudsman's Legislative Proposals

I decided to address this problem by proposing legislation during the 2005 session. Under the bill, a parent would be able to request the CSRU to administratively modify a support order, when the child for whom the parent is ordered to pay support resides with and is being cared for by that parent for a period reasonably expected to last at least six months. The bill would also allow the parent the option to simultaneously request the CSRU to also establish an administrative support order for that parent to receive support for the child.

Existing law (section 252H.4) authorizes the child support recovery unit to adopt rules to establish the criteria and procedures for administrative modifications. The unit has provided by rule certain limited circumstances under which it will modify support orders.

The bill we submitted would have just added to the types of situations for which the DHS would do administrative modifications.

The bill did not pass in 2005. The DHS claimed it would be too costly. We disagreed.

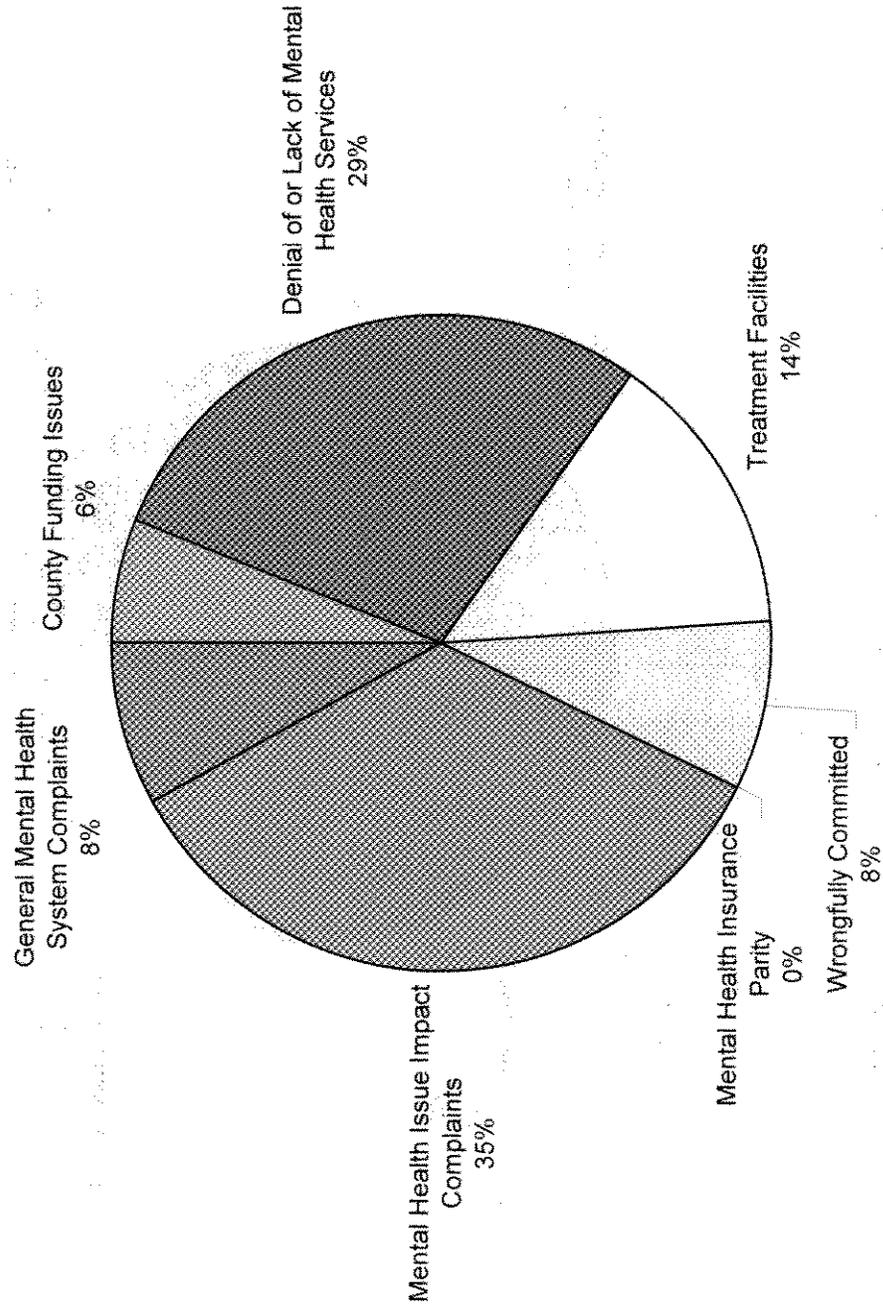
We resubmitted the bill in the 2007 legislative session. There was renewed and increased interest in the bill by legislators, but again it did not pass. This time a representative of the Judiciary informed legislators that the Judiciary was developing a pro se process with prepared forms, under which it would be easier for a parent to go to court and obtain a modification order.

As of today the pro se process has not been implemented; in response to our last inquiry in April, an employee of the Judiciary informed us it is still being worked on. So, the problem remains.

As an example, a DOC official gave us an estimate in May that about an average of 10 inmates at the Iowa Correctional Institution for Women continue to receive current child support.

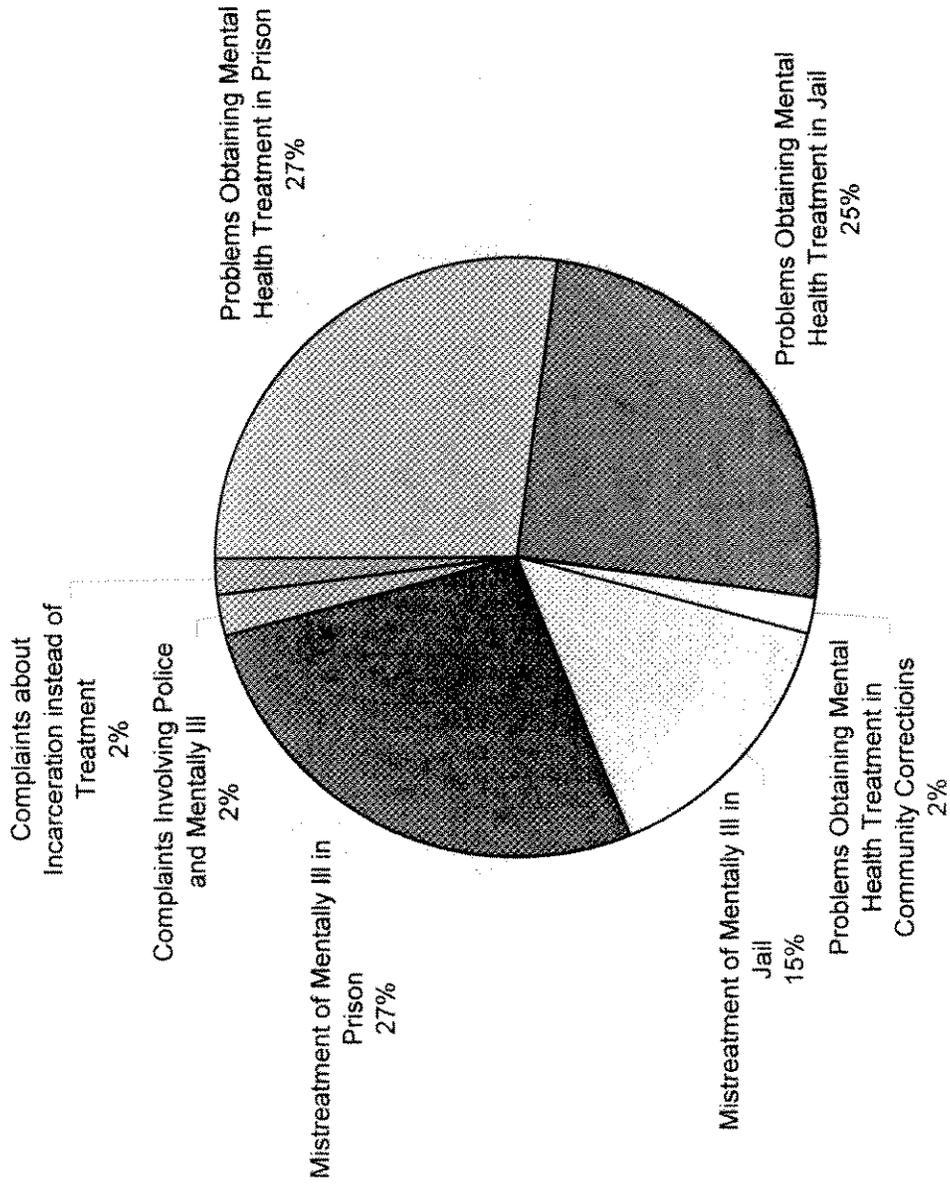
Even if the judicial pro se process is eventually implemented, we have concerns that it will still be more costly, more time consuming, and not as efficient as an administrative modification. In addition, the pro se process would not establish an order of support for the parent with the child, and the parent still would need to file a separate request to CSRU for that service or action.

General Mental Health Complaints 1/1/2008 to 5/14/2008



This chart shows the proportion of contacts opened by the Ombudsman's office between January 1, 2008 and May 14, 2008 where complainants claim they were adversely impacted as the result of their mental illness and/or the mental health aspect of the complaint was articulated by the complainant or the agency. These numbers exclude Corrections-related complaints.

**Mental Health Complaints
Corrections, Jails and Community Based 1/1/08 to 5/14/08**



This chart shows the Corrections-related contacts opened by the Ombudsman's office between January 1, 2008 and May 14, 2008 where complainants claim they were adversely impacted as the result of their mental illness and/or the mental health aspect of the complaint was articulated by the complainant or the agency.